IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

WP(C).No. 29889 of 2006(G)

OS.299/1987 of M.C.,PARAPPANANGADI

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PETITIONER:

KAMMUKUTTY ALIAS ABDURAHIMANKUTTY,
ASSAMAKKITHANAKATH, RAYIRIMANGALAM AMSOM,
TANUR NAGARAM, MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

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1. NEDUMBALLI KUNHALI,
S/O.MOIDEEN KUTTY, RAYIRIMANGALAM AMSOM AND
DESOM, TANUR, MALAPPURAM DISTRICT.

2. KUTTYACHANTE PURAKKAL ABDULLAKUTTY
ALIAS BAPPUTTY, S/O.KUNHIMUHAMMED,
RAYIRIMANGALAM AMSOM AND DESOM, TANUR NAGARAM,
MALAPPURAM DISTRICT.

3. MUKKADAVATH SUMANGALA'S SON PRAVEEN
KUMAR, MUKKADAVATH `ASOKAM', 4/270,
VADANAPPALLI, THRITHALLUR, THRISSUR DISTRICT.

4. MUKKADAVATH SUMANGALA'S SON
SARATHCHANDRAN, MUKKADAVATH `ASOKAN',
4/270, VADANAPPALLI, THRITHALLUR, THRISSUR
DISTRICT.

5. IMBICHIBAVA, S/O.AYISAKUTTY,
PANACHINTEPURAKKAL, RAYIRIMANGALAM, TANUR,
MALAPPURAM DISTRICT.

6. KUNHIMUHAMMED KUTTY, S/O.AYISAKUTTY,
PANACHINTEPURAKKAL, RAYIRIMANGALAM,
TANUR, MALAPPURAM DISTRICT.

7. HAMZAKOYA, S/O.AYISAKUTTY,
PANACHINTEPURAKKAL, RAYIRIMANGALAM, TANUR,
MALAPPURAM DISTRICT.

8. BEEPATHU, D/O.AYISAKUTTY,
PANACHINTEPURAKKAL, RAYIRIMANGALAM,
TANUR, MALAPPURAM DISTRICT.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE ORDER OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI IN I.A.1349/2006 IN O.S.299/1987 DATED 3.11.2006 ON THE FILE OF THE MUNSIFF COURT OF PARAPPANANGADI

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.29889 OF 2006

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DATED THIS THE 12th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is supplemental second plaintiff in O.S.219 of 1987. The suit was filed by father of the petitioner as the sole plaintiff. On his death, petitioner was impleaded as his legal representative on the strength of an assignment deed executed by the deceased. Respondents 5 to 8 filed I.A.1349 of 2006 an application under Order 1 Rule 10 to get themselves impleaded as additional plaintiffs. It was objected to by petitioner. Under Ext.P1 order, learned Munsiff allowed the application. It is challenged in this petition filed under Article 227 of Constitution of India. The case of the petitioner is that the plaint schedule property originally belonged to Bavutty, father of Moideen Bava the original plaintiff and Bavutty had three children, Moideen Bava, Ayisakutty Umma and Assanaru Bava. Ayisakutty Umma died as a spinster and her right devolved on Moideen Bava and Assanaru Bava left the place long back and was not heard of for more than the requisite period and

therefore presumed to have undergone civil death and Moideen Bava was the exclusive owner in possession who transferred it to the petitioner, who later got himself impleaded as second plaintiff and therefore learned Munsiff should not have impleaded respondents 5 to 8 as additional plaintiffs.

2. Learned counsel appearing for the petitioner vehemently argued that as petitioner is the supplemental plaintiff, as against his wishes, respondents 5 to 8 cannot be allowed to be impleaded and even if they are impleaded, they cannot be impleaded as additional plaintiffs and can only be impleaded as additional defendants. Learned counsel appearing for respondent contended that Ayisakutty Umma was not a spinster and she had married Kammukutty and respondents 5 to 8 are the children born to Ayisakutty Umma and therefore they are co-owners and they are entitled to get themselves impleaded in the suit and even if they are not to be impleaded as plaintiffs, they are to be impleaded as additional defendants.

3. On hearing learned counsel appearing for petitioner and respondents, it is clear that the suit

was not filed by the petitioner. It was instituted by deceased Moideen Bava. Petitioner claims exclusive right on the basis that the property originally belonged to the father of Moideen Bava and Ayisakutty Umma died as a spinster and the other brother has undergone a civil death. What was contended by respondents 5 to 8 is that Ayisakutty Umma was not a spinster and she had married Kammukutty, son of Assanarukutty and respondents 5 to 8 were born in that wedlock and therefore they are entitled to be impleaded as additional plaintiffs. The question whether Ayisakutty Umma died as spinster or respondents 5 to 8 are her children are to be decided in the suit. It cannot be decided in this petition. As petitioner has already been impleaded as additional plaintiff, respondents 5 to 8 cannot be impleaded as additional plaintiffs as they are in conflict with the petitioner. Ext.P1 order is therefore modified to the limited extent of impleading respondents 5 to 8 as additional plaintiffs. They are impleaded as additional defendants. Learned Munsiff is directed to proceed with the suit in accordance with law, after affording

opportunity to additional defendants to file a written statement.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-